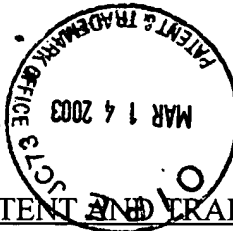


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3622
#178

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:
MICHAEL C. SCROGGIE ET AL.

:
: GROUP: 3622

APPLICATION NUMBER: 09/401,939

: EXAMINER: GRAVINI, S.

FILED: September 23, 1999

:

FOR: SYSTEM AND METHOD FOR PROVIDING SHOPPING AIDS AND INCENTIVES
TO CUSTOMERS THROUGH A COMPUTER NETWORK

37 CFR 1.181 Petition to Remove Final Status

RECEIVED
MAR 21 2003
GROUP 3600

I. Statement of the Relief Requested

The applicant petitions to have the final status removed to the extent necessary to admit the evidence attached to the applicant's appeal brief.

II. Statement of the Material Facts

1. In the office action prior to the final office action, the examiner relied upon alleged personal knowledge, for the first time in this application, to rejections under 35 USC 102/103.

2. In response to that non-final office action, the applicant submitted evidence and arguments contrary to the examiner's alleged personally knowledge. The undersigned spoke with a third party in a position of personal knowledge whose knowledge contradicted the examiner's factual assertions. (Mr. Ruggieri, the web master of performancebike.com.) The applicant pointed out in the response to the non-final office action that the examiner had not given a declaration, and that if the examiner did give a declaration, the applicant would seek a declaration from third party witness (Mr. Ruggieri), i.e, submit additional evidence.

3. The examiner responded by giving a declaration and making his office action status "final."

4. The applicant is filing an appeal brief concurrently with this petition containing 9 attachments, which are each evidence tending to contradict the examiner's assertions in his declaration supporting his rejections of claims in this application.

III. Statement of the Reasons Why the Relief Requested Should be Granted

The final status of the application is improper because the examiner's declaration is new evidence in support of his personal knowledge based prior art rejections and therefore final status is improper. Accordingly, the evidence submitted in conjunction with the appeal brief should be entered and considered in the appeal.



31518

PATENT TRADEMARK
OFFICE

3/13/03

Date

Respectfully Submitted,

Richard A. Neifeld, Ph.D.

Registration No. 35,299

Ruay Lian Ho

Registration No. 48,110

Printed: March 13, 2003

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